

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

DENNIS EARL YOUNGKIN
Complainant

and

SKIFF MEDICAL CENTER
Respondent

CASE NO. 4692

1992 AUG 31 PM 5:14
PUBLIC EMPLOYMENT
RELATIONS BOARD

Proposed Decision and Order

Statement of the Case

James A. McClimon, Administrative Law Judge. The prohibited practice complaint in this case was filed pursuant to Section 11 of the Public Employment Relations Act (Act), and Chapter 3 of the Rules of the Public Employment Relations Board (Board). Dennis Earl Youngkin (Youngkin) alleges that the Skiff Medical Center (Hospital) discharged Youngkin for his union organizational activities, in violation of Section 10.2(a), (c) and (d) of the Act. The Hospital denies Youngkin's allegation.

A public hearing was held in Des Moines, Iowa, on June 18 and 22, 1992, at which time Youngkin and the Hospital had full opportunity to present evidence and testimony. Post-hearing briefs were received by July 2, 1992.

Based on the record presented in this case, I make the following:

FINDINGS OF FACT

The prohibited practice complaint in this case arose as a result of Skiff Medical Center's discharge of Dennis Youngkin. At the time of his discharge Youngkin was employed as a respiratory therapy technician.

The following chronology outlines Dennis Youngkin's employment history with Skiff Medical Center and other relevant events regarding activities by the Public, Professional and Maintenance Employees, Local 2003 (PPME) to organize certain Hospital employees:

July 1, 1988

The Hospital hires Dennis Youngkin.

March 16, 1989

William Lahart, Director of Respiratory Therapy, rates Youngkin as an excellent employee on Youngkin's six-month written employee performance evaluation.

October 5, 1989

Lahart rates Youngkin as "outstanding" as part of Youngkin's first annual job performance evaluation.

February 9, 1990

Ronald Ross, Hospital Administrator, prepares a letter of appreciation to Youngkin in which Ross recognizes Youngkin's willingness to return to the Hospital ". . . during the middle of the night" to perform respiratory treatments. Ross also wrote: "Your dedication and support certainly is an example for all Skiff employees to follow." (Joint exhibit #1)

June 26, 1990

Lahart and Lois Vogel, then Director of Nursing, conduct a special performance review with Youngkin, at which time Lahart discussed several concerns raised by Hospital registered nurses regarding Youngkin's working relationship with the nurses.

May, 1991

The Hospital becomes aware that representatives of PPME have met with Hospital employees.

July 1, 1991

Lahart places a note in Youngkin's personnel file indicating that Lahart warned Youngkin not to either solicit union support or perform other union activities during work-time.

July 22, 1991

Lahart and Ross conduct a special performance review with Youngkin in which Youngkin received a verbal warning for

"leafing through" a rolodex containing the nursing staff names, addresses and telephone numbers.

July 22, 1991

Lahart and Ross conduct a second special job performance review in which Youngkin received a written warning for failing to provide patient treatment and failing to document on the patient's chart the reason the treatment was not given.

July 31, 1991

PPME files with the Public Employment Relations Board a combined unit determination and bargaining representative determination petition seeking to represent certain Hospital employees for purposes of collective bargaining.

October 6, 1991

A note is placed in Youngkin's personnel file by a nurse indicating that Youngkin was observed looking at the nurse supervisors' book which contains certain nurse staffing notations.

October 16, 1991

As the result of a Board-supervised representation election, Hospital employees do not vote for PPME as the employees' exclusive bargaining representative.

December 19, 1991

An "anecdotal record" is placed in Youngkin's personnel file describing the history of Youngkin's failure to obtain a back examination, as required of all Hospital employees.

December 24, 1991

Ross writes a memorandum to Lahart in which Ross directs Lahart to require Youngkin obtain a back examination, otherwise Lahart is directed to take appropriate disciplinary action against Youngkin.

December 31, 1991

Lahart places a memo in Youngkin's personnel file indicating that Lahart discussed the back examination issue with Youngkin, and that Youngkin agreed to obtain a back exam.

February 26, 1992

Ross and Lahart conduct a special performance review with Youngkin in which Youngkin was discharged for: (1) Failing to replace, on February 14, 1992, an oxygen tank in the operating room; and (2) Failing to report to work as scheduled on February 18, 1992.

March 30, 1992

Youngkin files a prohibited practice complaint.

There is no dispute in the record that Hospital employees and management representatives knew that Dennis Youngkin was active in assisting PPME organize Hospital employees. Youngkin's union organizational activities included distributing dues authorization cards and serving on PPME's organizational committee.

Administrator Ronald Ross testified that he wrote three letters to Hospital employees in which Ross discouraged employees from supporting PPME. The Hospital also distributed to supervisors written answers to hypothetical questions regarding PPME's organizational activities, including an answer that PPME may call a strike if the Hospital did not meet union demands, and "this union has called strikes at other companies."¹

Myrna Osten, Radiology Aide Assistant, testified that she complained to the Hospital that Carol Hammer, Licensed Practical Nurse (LPN), discussed Hammer's opposition to PPME during work hours, and that Hammer stated she would not work with Hospital employees who favored PPME. Osten felt that Hammer's conduct was inappropriate because Hammer's comments were made in the presence of patients. Eric Lothey, Assistant Administrator for Support Services, testified that he investigated the incident cited by Osten, and Lothey concluded that discipline was not appropriate since it was an emotional time at the Hospital, however, he advised Hammer not to discuss union issues during work time. Lothey

¹Complainant exhibit #1.

further testified that he interviewed all employees involved in the incident, and certain nurses alleged that union supporters initiated the incident. Lothey further testified that he was aware that certain nurses were strongly against union representation at the Hospital.

Myrna Osten also testified that her physician supervisor told her that Ronald Ross would not grant Osten's request for a pay raise based on a job reclassification due to Osten's union activities. Osten further testified that she has not been disciplined, and that in May, 1992, Osten received a \$750 continuing education scholarship presented by representatives of the Hospital auxiliary, physicians, and certain Hospital representatives, including Ross.

Allen Majors, Laboratory Medical Technician, testified that he also heard Carol Hammer state that she would not work in a "union" hospital. Majors also testified that he often looked through the rolodex containing Hospital employee names, addresses and telephone numbers, and Majors indicated that he was not aware that the rolodex contained confidential information. Majors further testified that Dennis Youngkin was not difficult to work with. Majors noted that he is a vocal union supporter, and that he has not been disciplined by the Hospital.

Bonnie Van Note, Medical Records Secretary, testified that Hospital employees who favored union representation were concerned for their job security. Van Note also testified that her department head told Van Note that union business meetings would

take time away from patient care. Van Note further testified that she is an active union supporter and that she has not been disciplined by the Hospital. Van Note received a written commendation from Ronald Ross in April, 1992, as a result of Van Note's care for a patient.

Luann Wheeler was employed by the Hospital as a Respiratory Technician Aide between October, 1988, and January, 1992, and Wheeler testified that Dennis Youngkin cooperated with patients and staff. Wheeler also testified that she was an active union supporter and that she was not disciplined by the Hospital.

Administrator Ronald Ross testified that, beginning in June, 1990, Ross began to view Dennis Youngkin as a poor employee. Ross also testified that he based his opinion on documented and other reported accounts of Youngkin's working relationship with Hospital personnel, and that his opinion of Youngkin was not based on Youngkin's attempts to assist PPME organize Hospital employees. Ross admits that Youngkin received a verbal warning for "leafing through" a rolodex of employee names, addresses, and telephone numbers because the Hospital believed that Youngkin was obtaining information on work time to assist PPME. It is Ross' testimony, however, that the primary reason Youngkin was discharged was Youngkin's failure on February 14, 1992, to replace a transport oxygen tank in the Hospital operating room. Ross also testified that Youngkin would not have been discharged but for Youngkin's poor working relationship with Hospital employees and Youngkin's negligent work habits.

Lois Vogel, Assistant Administrator of Clinical Services, testified that Dennis Youngkin's June 26, 1990, special performance review was the result of a prior meeting attended by Vogel and approximately ten nurses from the Hospital's nursing management team. At that meeting the nurses identified seven specific problems concerning the working relationship between Youngkin and the nursing staff. Vogel noted, for example, a "code blue" (cardiac arrest) incident in which Youngkin aggressively insisted to defibrillate (revive) a patient with an EEG machine attached to the patient. Vogel felt that, during that emergency, Youngkin was not qualified to supervise the nursing team. Vogel considered the June 26, 1990, special performance review as discipline. Vogel also testified that subsequent to the performance review she advised William Lahart of continued problems in which Youngkin did not cooperate with nursing staff.

William Lahart testified that Dennis Youngkin initially began his employment with the Hospital as an excellent employee. Lahart noted, for example, that Youngkin agreed to return to work for emergencies more often than other respiratory therapy department personnel. Lahart also considered the June 26, 1990, special performance review as discipline, however, Lahart did not advise Youngkin that the review was disciplinary in nature. Lahart believes that the June, 1990, performance review was the result of Youngkin being too aggressive, and not limiting his work contribution to his assigned respiratory technician job duties and responsibilities. For example, Lahart noted that Youngkin would

respond to assist in the emergency room when off-duty after hearing of an emergency over Youngkin's radio scanner. The recommendation regarding Youngkin's assistance during these emergencies required Youngkin to be more productive, less critical, and to work with the medical team in the emergency room. The June 26, 1990, special performance review states that Youngkin "accepted the information and concerns with a positive attitude." (Joint exhibit 3). Youngkin also testified that as a result of the June 26, 1990, performance review, Youngkin was instructed to follow physician orders and directives. Youngkin believes that his working relationship improved with the nursing staff after the special performance review.

Dennis Youngkin testified that on July 1, 1991, he asked a nurse aide whether the aide was interested in joining PPME and the aide indicated that she was not interested. The conversation between Youngkin and the aide was reported to Hospital management and subsequently, William Lahart advised Youngkin not to solicit union membership on work time. Youngkin complied with Lahart's directive.

With respect to the first special performance review conducted on July 22, 1991, Dennis Youngkin was observed "leafing through" the emergency room rolodex file. Youngkin testified that he attempted to utilize the names, addresses, and telephone numbers contained in the rolodex to contact Hospital employees to encourage the employees to support a Hospital bond issue. Youngkin understood that the Hospital does not release employee rolodex

information to the public, however, he was not instructed that such information was confidential. Ronald Ross testified that the Hospital asked employees to contact people to vote for the bond issue.

With respect to the July 22, 1991's second special performance review, Dennis Youngkin testified that on July 15, 1991, he was called at home, at approximately 5:00 a.m., by a floor nurse to give an inhaler treatment because a patient was having trouble breathing. Youngkin testified that he returned to the Hospital and noted the time of the treatment on the patient's respiratory therapy chart, however, the patient was asleep. Youngkin then advised the floor nurse that the inhaler treatment was inappropriate at that time because, according to the patient's chart, the patient received a treatment approximately forty minutes prior to Youngkin arriving at the Hospital. The floor nurse disagreed with Youngkin, and Youngkin advised the nurse to contact the patient's physician to clarify the disagreement. According to Youngkin, the floor nurse walked away from him and Youngkin returned home. Youngkin testified that he did not give the inhaler treatment because, in his opinion, the timing of the treatment would have violated the physician's orders.

The following morning, July 16, 1991, William Lahart confronted Dennis Youngkin about the incident, and Lahart told Youngkin that he had just completed an inhaler treatment on the patient. At that time Youngkin told Lahart that he did not perform the treatment because the patient was asleep and that Youngkin

believed that an additional treatment would violate the physician's orders. After his conversation with Lahart, Youngkin remembered to change the patient's respiratory therapy chart which indicated that Youngkin had performed the inhaler treatment. Youngkin testified that during the July 22, 1991, special performance review, Ronald Ross advised Youngkin that the floor nurse was the appropriate person to determine when to give treatments. Youngkin believed that this was a change from directives he received during the June, 1990, performance review session when he was instructed to follow physician orders and directives.

LPN Carol Hammer reported on October 6, 1991, that she observed Dennis Youngkin looking through the nurse supervisors' book which contains information regarding nurse staffing. Hammer prepared a note describing the incident, and the note was placed in Youngkin's personnel file. Youngkin testified that he was not aware that the supervisors' book was confidential.

On February 26, 1992, Ronald Ross and William Lahart conducted a third special performance review with Dennis Youngkin in which the Hospital alleged that Youngkin: (1) failed to replace a transport oxygen tank in the operating room on February 14, 1992; and (2) Youngkin did not report to work as scheduled on February 18, 1992. There is limited evidence in the record regarding the basis for the Hospital's allegation that Youngkin failed to timely report to work on February 18, 1992. Rather, the record establishes, consistent with Youngkin's testimony, that the

Hospital did not properly notify Youngkin that his schedule was altered.

With respect to the oxygen tank incident, there is no dispute in the record that Dennis Youngkin agreed on Friday, February 14, 1992, to replace a transport oxygen tank in the Hospital operating room, and there is no dispute that the tank was not replaced as of Monday, February 18, 1992. However, there is considerable disagreement in the record regarding Youngkin's motive for not replacing the tank, and the record contains a dispute over whether it is the responsibility of the respiratory therapy department to replace operating room transport oxygen tanks.

At approximately 8:00 p.m. on Friday, February 14, 1992, Mona Olmer, Registered Nurse, asked Dennis Youngkin to replace a transport oxygen tank in the operating room, and at that time Youngkin responded that he believed it was anaesthesia's job to replace all oxygen tanks in the operating room. Olmer then contacted Debra Grife, Night Nursing Supervisor, and Grife again asked Youngkin to replace the tank for any emergency surgery which may occur over the weekend. At that time Youngkin told Grife that he advised Olmer that it was not his job to replace the oxygen tank, however, Youngkin agreed to change the tank.

Dennis Youngkin testified that he forgot to change the transport oxygen tank because, after he agreed to replace the tank, he assisted a heart attack patient in the emergency room and when he attempted to go home after completing certain reports, he returned to the Hospital from the Hospital parking lot when a

maintenance employee advised Youngkin that Youngkin was needed for another emergency. Youngkin also testified that he remembered to replace the oxygen tank when he returned to work on Monday, February 18, 1992 when he heard the operating room "page" respiratory therapy. Youngkin then replaced the oxygen tank and Youngkin testified that he advised William Lahart that he forgot to replace the tank. It is Youngkin's testimony that Lahart did not instruct Youngkin, as part of Youngkin's respiratory therapy training, that Youngkin was required to replace operating room transport oxygen tanks.

William Lahart testified that he instructed all respiratory technicians that it is the respiratory therapy department's responsibility to change all oxygen tanks throughout the Hospital. Lahart recognizes that maintenance personnel occasionally replace oxygen tanks, however, Lahart also testified that he showed respiratory technicians the location of all oxygen tanks located in the Hospital, including the operating room transport tank. It is Lahart's testimony that on Monday, February 18, 1992, Youngkin asked Lahart whether respiratory technicians were responsible to change operating room transport oxygen tanks, however, Youngkin did not tell Lahart that Youngkin forgot to replace the tank. After Youngkin's conversation with Lahart, Lois Vogel advised Lahart that Youngkin did not replace the tank on Friday, as agreed. Lahart believes that Youngkin lied to him because Youngkin did not tell Lahart that Youngkin forgot to replace the tank.

Luann Wheeler testified that, during her employment as a Respiratory Technician Aide, William Lahart did not instruct her to replace transport oxygen tanks in the operating room. Stan Burt, who worked in the Hospital's maintenance department between April, 1988 and January, 1992, testified that maintenance personnel often changed oxygen tanks throughout the Hospital. Burt was not aware that respiratory therapy technicians replaced operating room oxygen tanks, and Burt also testified that maintenance personnel are available at the Hospital during weekends to replace oxygen tanks, for emergency surgeries.

CONCLUSIONS OF LAW

The issue in this case is whether Skiff Medical Center discharged Dennis Earl Youngkin for his union organizational activities, in violation of Section 10.2(a), (c) and (d) of the Public Employment Relations Act. Section 10.2 states, in relevant part:

It shall be a prohibited practice for a public employer or the employer's designated representative willfully to:

a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.

* * *

c. Encourage or discourage membership in any employee organization, committee or association by discrimination in hiring, tenure, or other terms or conditions of employment.

d. Discharge or discriminate against a public employee because the employee has . . . formed, joined or chosen to be represented by any employee organization.

Dennis Youngkin contends that the Hospital's union animus in this case is demonstrated by the Hospital's attempt to discredit

PPME by intentionally misrepresenting to employees, among other things, that PPME would call a strike against the Hospital if the Hospital did not meet PPME's "demands". Youngkin argues that such deliberate misrepresentation caused employees to be concerned about their job security. Youngkin also contends that he worked well with all employees except certain nurses who were strongly anti-union, and Youngkin is convinced that the Hospital allowed the nurses to "build a personnel file" against him.

With respect to the merits of the discharge, Dennis Youngkin contends that the Hospital singled-out Youngkin for increased surveillance, and Youngkin maintains that at no time during his employment with the Hospital that he intentionally neglected patient care and safety.

As a remedy, Dennis Youngkin requests to be reinstated to his former position with full back pay and benefits. Youngkin also requests that the Hospital pay his attorney's fees.

The Hospital contends that its decision to discharge Dennis Youngkin was not motivated by union animus because Youngkin's employment problems began approximately one year prior to any union organizational efforts at the Hospital, and Youngkin's discharge occurred approximately six months after Hospital employees voted not to be represented by PPME. The Hospital also contends that the Hospital's attempts to persuade employees not to be represented by a labor organization does not constitute union animus, and the Hospital argues that the Hospital did not discipline any employees for supporting PPME.

With regard to the merits of Dennis Youngkin's discharge, the Hospital argues that Youngkin's employment history reveals that Youngkin, on several occasions, exceeded his authority as a respiratory therapy technician, and that Youngkin did not cooperate with the nursing staff. The Hospital believes that Youngkin's refusal to change an operating room transport oxygen tank also exhibits Youngkin's disregard to provide safe and quality patient care. It is the Hospital's position that: (1) Dennis Youngkin violated Section 22.7(11) of the Code of Iowa by reviewing the names, addresses and telephone numbers of Hospital employees contained in a rolodex file; and (2) Youngkin's discharge was consistent with the disciplinary procedure and standards contained in the Hospital's Personnel Policy Manual.

Skiff Medical Center believes that it has legitimate and legal business reasons to discharge Dennis Youngkin. Youngkin, on the other hand, is convinced that the Hospital illegally discharged him because of his support for the Public, Professional and Maintenance Employees, Local 2003, to organize certain Hospital employees.

The Public Employment Relations Board,² and the Iowa Court of Appeals,³ have previously concluded that where legal and illegal motives for a discharge are alleged, the Board applies the dual-motive Wright Line test developed in the private sector case NLRB v. Transportation Management Corporation.⁴ Under the Wright Line

²Melcher-Dallas Community School District, 84 PERB 2465.

³Cerro Gordo County v. PERB, 395 N.W.2d 672 (Iowa, App. 1986).

⁴113 LRRM 2857, (1983).

test, Dennis Youngkin has the burden of making a prima facie showing that the exercise of protected union organizational activity was a substantial or motivating factor in the Hospital's decision to discharge Youngkin. If a prima facie case is established, the burden shifts to the Hospital to establish that Youngkin's discharge would have occurred regardless of Youngkin's support for PPME. The shifting burden of proof under the Wright Line analysis, therefore, requires the Hospital to establish an affirmative defense; that is, the discharge would have occurred in any event and that Youngkin's discharge was lawful and for valid reasons.

I. Prima Facie Case

At hearing I reserved ruling on the Hospital's motion to dismiss in which the Hospital argued that Dennis Youngkin failed to establish that union organizational activities were a substantial or motivating factor in the Hospital's decision to discharge Youngkin. For the following reasons the Hospital's motion is denied.

The record presented in this case demonstrates union animus on the part of the Hospital, and that the decision to discharge Dennis Youngkin was motivated by his union organizational activities.

The record clearly establishes that employees and the Hospital were aware in May, 1991, of Dennis Youngkin's union organizational activities. These activities included distributing dues authorization cards for the Public, Professional and Maintenance Employees, Local 2003. The record also establishes that

approximately one year prior to his union support, Youngkin and the Hospital's nursing staff developed work-related problems. The record demonstrates that certain nurses were strongly anti-union, and most importantly, the record clearly establishes that the Hospital allowed nurses to place notes in Youngkin's personnel file questioning Youngkin's work performance. Youngkin's file contains a note from a nurse indicating that Youngkin was observed looking at the nurse supervisors' book which allegedly contains certain confidential nurse staffing notations. It is important to note here that with respect to the nurse supervisors' book, the note in Youngkin's file was prepared by Carol Hammer who was vocally anti-union. Youngkin's personnel file also contains a note from a nurse supervisor, indicating that the nurse observed Youngkin "leafing through" a rolodex file containing nurses' names, addresses and telephone numbers. This note was utilized by the Hospital to conduct a special performance review and issue Youngkin a verbal warning not to review the contents of the rolodex file. Significantly, Administrator Ronald Ross admits that the Hospital believed that Youngkin was obtaining rolodex information to assist PPME. The Hospital did not accept Youngkin's defense that he was attempting to obtain personnel data to encourage employees to vote for a Hospital bond issue. Moreover, Youngkin's personnel file contains a note from William Lahart directing Youngkin not to solicit union support during work time, whereas Eric Lothey decided not to document his warning to Carol Hammer for expressing her

anti-union sentiments during work time and in the presence of patients.

The practice of placing notes in Dennis Youngkin's personnel file, without advising Youngkin, along with the uncontroverted testimony of other Hospital employees that the Hospital has not advised employees that neither the nurse supervisors' book nor the rolodex file are confidential, establishes the Hospital's union animus. Moreover, I conclude that Youngkin did not violate Section 22.7(11) of the Code of Iowa which identifies certain personal information in personnel files as confidential. The Hospital cites no authority in this case to reasonably conclude that the rolodex is confidential under the statute.

In addition, the record reveals that the Hospital's response to PPME's organizational efforts caused certain employees who supported PPME to be concerned about their job security. I recognize that an employer's attempts to persuade employees that union representation may not be in the employees' best interests is a legitimate response to union organizing efforts. However, record testimony in this case indicates that the Hospital made it clear to employees that PPME would call a strike against the Hospital if the Hospital did not meet PPME's "demands". There is no record evidence that PPME has initiated a strike against either a public or private sector employer, and it is reasonable to conclude from the testimony presented at hearing that the Hospital's misrepresentation of PPME's intentions helped fuel the discontent between union supporters and anti-union employees. Indeed, Eric

Lothey testified that he decided not to document his investigation of alleged anti-union statements made by certain nurses because, according to Lothey, it was an emotional time at the Hospital.

II. The Discharge

Having determined that union animus was a motivating factor in the Hospital's decision to discharge Dennis Youngkin, it is now necessary to decide whether the Hospital had legitimate business reasons for the discharge.

In adopting the Wright Line test the Iowa Court of Appeals concluded:

The Act imposes a prohibition on public employers which is simple to state but often difficult to apply in practice: a public employer may not discharge an employee because of union activity . . . Public employers must apply their usual rules and disciplinary procedures and standards to a union activist just as they would to any other employee . . . Hence, in a given discharge case it must be decided whether the employer acted because of some factor unrelated to the employee's union status. (Cerro Gordo County at pp. 675-676; citations omitted.)

The Court's conclusion will be utilized in this case in reviewing the Hospital's application of its disciplinary procedures and standards to Dennis Youngkin's employment history with the Hospital.

Skiff Medical Center contends that its discipline and discharge of Dennis Youngkin was consistent with the disciplinary procedures contained in the Hospital's Personnel Policy Manual. Section 1(N) of the Manual establishes a progressive discipline procedure which includes counseling, written warning, suspension

and discharge. In this case the Hospital did not suspend Youngkin prior to discharge.

The Hospital's position is best summarized in its post-hearing brief:

It is not necessary in this Hearing to determine whether Youngkin believed changing the tank was his job or not. The important aspect of this incident was that Youngkin had agreed to do something and then failed to do it. If this had been an isolated incident, it is possible that it may not have resulted in his termination, but in view of Youngkin's job history the Hospital had no choice but to terminate Youngkin's employment. (Brief at p. 10).

Dennis Youngkin's discharge in this case must stand or fall on the reasons given at the time of the discharge. Therefore, only the documented evidence bearing on the charges made at the time of discharge have been considered in reviewing the Hospital's motive to discharge. I note this principle here because Administrator Ronald Ross testified that his opinion that Youngkin was a poor employee was based on documented and other reported accounts of Youngkin's working relationship with Hospital personnel. Indeed, Lois Vogel testified that after the June 26, 1990, special performance review, she continued to advise William Lahart of the problems in which Youngkin did not cooperate with the nursing staff. These alleged problems are not documented in Youngkin's personnel file.

The testimony of Ronald Ross and William Lahart are critical to the resolution of this prohibited practice complaint because both Ross and Lahart acknowledge that Dennis Youngkin's overall work record was the motivating reason for Youngkin's discharge. The evidence presented at hearing clearly establishes that

Youngkin's discipline record began with a special performance review in July, 1991, at which Youngkin received a verbal warning for allegedly using information contained in a rolodex to support PPME's organizational efforts at the Hospital. A further review of Youngkin's personnel file reveals seven other documents relating to Youngkin's job performance. Excluding the three documents concerning Youngkin's failure to obtain a back examination, (which the Hospital now admits in its brief were not considered in Youngkin's discharge), Youngkin's personnel file contains four documents, two of which relate to the following union organizational activities: a verbal warning not to solicit union support during work time which was inconsistent with the manner in which the Hospital applied its no solicitation rule to Carol Hammer who discussed her opposition to PPME during work hours and in the presence of patients; and an October 6, 1991, note from Carol Hammer indicating that Youngkin reviewed the nurse supervisors' book. I do not consider the June 26, 1990, special performance review as discipline because William Lahart did not advise Youngkin that the review was disciplinary in nature.

Dennis Youngkin was employed by Skiff Medical Center between July, 1988, and February, 1992, and during that employment relationship, the Hospital initially considered Youngkin an excellent employee. Indeed, the record reveals that Youngkin returned to work for emergencies more often than other respiratory therapy department personnel. However, beginning in June, 1990, Youngkin was criticized by the nursing staff for being too

aggressive and failing to follow directions. As a result, Youngkin received a written warning on July 22, 1991, for failing to give a patient an inhaler treatment, and on February 26, 1992, Youngkin was discharged for not replacing a transport oxygen tank in the operating room.

With respect to the July 22, 1991, written warning, the record contains conflicting testimony regarding the proper timing and type of treatment required for the patient. This conflicting testimony clearly establishes from credible witnesses differing professional medical opinions. The record is clear, however, that Youngkin accepted the Hospital's discipline regarding this incident because Youngkin did not grieve the written warning through the grievance procedure contained in the Hospital's Personnel Policy Manual. However, Youngkin challenges the February 26, 1992, discharge through this prohibited practice proceeding.

Skiff Medical Center is convinced that Dennis Youngkin had no intention, on February 14, 1992, of replacing the operating room transport oxygen tank because Youngkin's refusal to replace the tank was characteristic of his previous uncooperative attitude towards the Hospital's nursing staff. The Hospital, therefore, simply rejects Youngkin's defense that he forgot to replace the tank. It is reasonable to conclude, therefore, that the Hospital was predisposed to reject any defense offered by Youngkin.

The fact that there is a disagreement in the record over whether the respiratory therapy department is responsible to replace the operating room transport oxygen tank, and the fact that

maintenance personnel were available over the February 14 to 18, 1992, weekend to replace the tank for any emergency surgery, is not controlling because Youngkin agreed to replace the tank and he was obligated to do so. Nonetheless, Youngkin's testimony is credible and uncontroverted. Youngkin forgot to replace the tank because he assisted with two emergencies immediately following his agreement to replace the oxygen tank, and Youngkin remembered to replace the tank on Monday, February 18, 1992, when he heard the operating room "page" respiratory therapy.

Clearly, an employer's statutory obligation under Section 10.2 of the Public Employment Relations Act rests on the facts of each case. The facts presented in this prohibited practice proceeding demonstrate what the Iowa Court of Appeals envisioned when the Court concluded that the statutory prohibition that a public employer may not discharge an employee because of union activity is simple to state but often difficult to apply. In this case the difficulty arises because there is no direct link to Youngkin's union activities at the time of discharge. Nonetheless, the record establishes that Youngkin's personnel file contains previous discipline in which the Hospital did not consistently apply its rules and disciplinary standards equally between a union activist and other employees. Most importantly, the Hospital's defense to the prohibited practice complaint relies on the contents of Youngkin's personnel file which the Hospital believes proves Youngkin was a poor employee. I recognize that Youngkin's discharge occurred after Hospital employees voted not to be

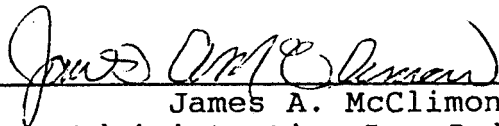
represented by PPME. Nonetheless, Youngkin's documented discipline began after Youngkin assisted PPME initiate its organizational efforts at the Hospital.

Based on the foregoing, I conclude that Skiff Medical Center violated Section 10.2(a), (c) and (d) of the Public Employment Relations Act. Therefore, I hereby issue the following:

ORDER

Skiff Medical Center shall, without delay, reinstate Dennis Youngkin to his former position with full back pay and benefits, less any interim earnings. Youngkin's request for attorney's fees is denied.

DATED at Des Moines, Iowa this 31st day of August, 1992.


James A. McClimon
Administrative Law Judge

cc: Sharon McIntosh
Ed McIntosh
Jim Brick